

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
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**NASHVILLE, TENNESSEE 37202**

March 12, 2004

Opinion No. 04-036

Effect of criminal summons statute on citizen arrests and the authority of a law enforcement officer to seek arrest warrants

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**QUESTIONS**

1. Do the recently-amended provisions of Tenn. Code Ann. § 40-6-215 (2003 Repl.) regarding the issuance of a criminal summons in lieu of an arrest warrant in certain circumstances prevent a private citizen from making an arrest as allowed by Tenn. Code Ann. §§ 40-7-109 and -110 (2003 Repl.)?

2. Do the recently-amended provisions of Tenn. Code Ann. § 40-6-215 (2003 Repl.) affect a law enforcement officer's authority to seek an arrest warrant for offenses committed outside of the officer's presence?

**OPINIONS**

1. No. Recent changes to Tenn. Code Ann. § 40-6-215 (2003 Repl.) concern a magistrate's authority to issue a criminal summons in lieu of an arrest warrant; whereas Tenn. Code Ann. §§ 40-7-109 and -110 (2003 Repl.) govern a private citizen's authority to make a warrantless arrest. Accordingly, modifications to Tenn. Code Ann. § 40-6-215 (2003 Repl.) have no bearing on a citizen's statutory authority to make a warrantless arrest.

2. No. Recent changes to Tenn. Code Ann. § 40-6-215 (2003 Repl.) relate to a magistrate ordering an arrest where the affiant for the warrant is not a law enforcement officer; thus, the modifications to the law have no bearing on the existing authority of a law enforcement officer to sign an affidavit for an arrest warrant concerning an offense that occurred outside of the officer's presence.

**ANALYSIS**

As the result of recent changes to Tenn. Code Ann. § 40-6-215, effective January 4, 2004, a criminal summons is now the exclusive means by which a magistrate, judge or clerk may compel an accused party to answer allegations that s/he has committed a criminal offense where the affiant

is not a law enforcement officer, with the lone exception being circumstances demonstrating that an arrest warrant “is necessary to prevent an immediate threat of imminent harm” to a domestic violence victim. *See* Tenn. Code Ann. § 40-6-215 (2003 Repl.).

Because the new legislation only relates to efforts by a private citizen to obtain an order or warrant for the arrest of a suspect, it does not affect a private citizen’s authority, set forth in Tenn. Code Ann. §§ 40-7-109 and -110 (2003 Repl.), to make a citizen arrest without a warrant.<sup>1</sup> Likewise, these changes have no bearing on a law enforcement officer’s authority to seek an arrest warrant for an offense committed outside of the officer’s presence.

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Requested by:

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<sup>1</sup>Nevertheless, as this Office has previously opined, the statute appears to require the issuance of a criminal summons instead of a warrant of arrest when a private citizen brings the person before a magistrate and serves as the only affiant. *See* Op. Tenn. Att’y Gen. 03-153 (Dec. 1, 2003) 2003 WL 23099753, at \*2 (copy attached).